vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.771 OF 2006
IN
WRIT PETITION NO.174 OF 1998

Harinarayan Bajaj ... Petitioner

V/s.

Union of India & Ors. ... Respondents

Mr.F.D'vitre with Mr.Zal Andhyaruzina for Petitioner
Mr.Kumar Desai for Respondent No.2
Mr.S.H. Doctor with Mr.Firoze Pardiwala for Respondent No.3
Mr.Iqbal Chagla with Ms.Sangeeta Bharti, M.C. Arvind, Mr.Navroj S. a/w Mr.Shyam Mehta a/w Ms.Dimple Shah for Respondent No.5
Mr.P.Modi with Mr.Sagar divekar for Respondent No.6

CORAM: **D.G. DESHPANDE & SMT.NISHITA MHATRE, JJ.**

DATED: **APRIL 20, 2007**

P.C.:

. Heard the learned Counsel for the parties. The Petitioner who does not hold any shares in the company i.e., Respondent No.5 has filed this Motion. He is representing his son who is holding 100 shares only in the said company. By way of this Motion in the Petition, he has claimed relief in terms of prayer (a) for the time being i.e., restraining the fifth Respondent from selling their shares to its subsidiaries Early Guard Limited (UK) or through Respondent No.4 or otherwise howsoever in any manner they choose. The prayer is strongly opposed by the advocate for Respondent No.5 on the ground that the Petition is filed

in 1998 and on page 25 of the Petition, an apprehension which is now sought to be made as the basis of this Motion was already expressed. "The Petitioner is apprehending that in the event this Court holds against Mitsui, it may simply avoid or escape its liability by making a transfer of its shareholding in Finsider. As a consequence irreparable hardship and injury would be caused to the Petitioner and other minority shareholders of SGL ...." Therefore, the learned Counsel for Respondent No.5 strenuously urged that no relief much less any relief under prayer (b) can be granted to the Petitioner because the apprehension though expressed in 1998 in the Petition itself, and inspite of the attempts made by the petitioner to secure any relief consistent with claim and pleadings as quoted above, were rejected not only by this Court but also by the Supreme Court. Our attention is drawn to 5 orders dated 19.3.1998 of the Division Bench of this Court, 15.7.1998 of the Supreme Court, 27.11.1998 of this Court, 18.7.2003 again order of this Court and 29.12.2006 an order of the learned Single Judge of this Court.

2. It is an admitted fact that twice orders were passed that this petition be listed for final hearing. We do not know why it did not come up for final hearing. We do not want to say anything whether the petitioner was not interested in the final hearing. But the fact

remains that even though the petition was listed for final hearing, it did not come before this Court. Had the petitioner been diligent in pressing for final hearing, the present situation may not have arisen.

3. Admittedly, since the date of filing the petition, i.e., since 1998 till today there is no ad-interim or interim order of any kind in favour of the petitioner. Therefore, there may or may not be delay but the petitioner having lost before the Securities Exchange Board of India and the Securities Appellate Tribunal, has no prima facie case. Motion rejected.

4. Place the petition for final hearing on 13.6.2007 at 3 O’clock before the appropriate Bench.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)